IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1792 of 1996

RUKMA DEVI
V/S
STATE & ORS

Mr. RK SONI, for the appellant / petitioner

Mr. BL BHATI, DY.G.A., for the respondent

Date of Order : 13.11.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition the petitioner seeks to challenge the order, Annex.9 passed by the Board of Revenue accepting the reference made vide order, Annex.8.

The skeleton facts of the case are that in the year 1983, the petitioner filed an application under Section 132 and 136 of the Rajasthan Land Revenue Act before the SDO, Deedwana alleging that he holds Patta, having been granted by erstwhile Jagirdar, with respect to two parcels of land, and a land adjoining to them, which was purchased by registered sale deed dated 7.7.52, and that the Pattas were Imarati. However, in the last settlement, the land happened to be recorded as Sivai Chak in Khasra No.1851 and 1690, and that proceedings were initiated against the petitioner under Section 91 of the Land Revenue Act in the year 1975 and 1977, which were

dropped. Therefore, it was prayed that the necessary correction be made in the revenue records ordering the land to be recorded as Abadi. This application was allowed by the SDO vide order dated 5.2.85 (Annex.5). Thereafter, the Collector, Nagaur forwarded 8 files to Addl. Collector, Nagaur vide order dated 9.6.86 for making reference, which includes the present file. Thereupon a reference case was registered by the learned Addl. Collector, and after hearing the parties vide order dated 23.9.94 ordered the reference to be made. In the order dated 23.9.94 various factual aspects were considered. This order has been produced as Annex.8, and the learned Board of Revenue vide Annex.9 has accepted the reference. It has been found inter-alia by the Board of Revenue that the order passed by the learned SDO could not be passed under Section 132 and 136 of the Land Revenue Act, as the SDO had no right to direct conversion of the nature of the land as done vide order dated 5.2.85.

Assailing this order, it has been contended on the authority of the judgment of this Court in Poosa Ram Vs. Board of Revenue, reported in 1995(2) DNJ (Raj.) 540, that under Section 136, the SDO has powers to correct any error in the record of rights, creeping in during settlement/survey operations, and is not limited to the class or nature of any tenant or regarding land, or revenue payable or regarding the entries in the annual registers.

I have considered the submissions and find that on the face of language of Section 136 and 132, even according to the interpretation of Division Bench of this Court in Poosa Ram's case do not authorise the SDO to direct conversion of the nature of the land. In Poosa Ram's case, the land was earlier recorded as agricultural land, and was subsequently erroneously recored as Abadi land, which was simply corrected by restoring to agriculture, while in the present case, this is not so, and in Poosa Ram's case itself the Division Bench has held that the SDO cannot convert the nature of the land. In the present case, it is not shown on the side of the petitioner that the land was ever recorded in the revenue record as Abadi land, which may have been wrongly recorded as agricultural land, so as to claim any benefit of the judgment of this Court in Poosa Ram's case.

May be that the petitioner claims under the two Pattas and/or the sale deed, which relate to a date prior to commencement of the Rajasthan Tenancy Act, or even the Rajasthan Land Revenue Act, and claims to be continuing in possession of the land as well, but then if the petitioner has title over the land on the basis of these documents, he is entitled to maintain his title and/or possession, and if any cloud is cast on the title, or possession over the land, which is claimed to be Abadi land, the petitioner may

have his legal remedies in accordance with the law, but then the remedy resorted to by way of Annex.5 could not be said to be the permissible legal remedy, and the learned Board of Revenue has rightly set aside that order.

Thus, I do not find any force in the writ petition. The same is, therefore, dismissed. However, it is clarified that this upholding of the order of the Board of Revenue by itself would not have the effect of taking away the title or possession of the petitioner, if the petitioner otherwise has it, and the petitioner will be free to avail such remedies as may be available to him under law, if any cloud is cast.

(N P GUPTA),J.

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